

WORKSHOP NOTICE

February 28, 1997

To Interested Parties

AB 1777 Workshops

We invite you to participate in workshops that we have scheduled to receive public comment on a draft rule to establish a statewide methodology governing the interchangeable use of emission reduction credits (see Attachment 1). The rule is required by AB 1777 (H&SC Section 39607.5). The workshops, both of which will cover the same topic, will be held at:

Workshop Date, Time, and Place

Friday, March 14, 1997

1:00 p.m. - 3:30 p.m.

California Dept. of Transportation
Board Room (Lower Level)

1020 N Street

Sacramento, California

Monday, March 17, 1997

1:00 p.m. - 3:30 p.m.

California Air Resources Board
Annex 4 Auditorium

9530 Telstar Avenue

El Monte, California

Background

On September 19 & 20, 1996, ARB staff held workshops to receive comments from the public on a proposed draft state regulation (dated August 23, 1996) that would govern the interchangeable use of emission credits (State rule). As a result of comments provided at the workshop and during subsequent discussions with interested parties, ARB staff has revised the draft rule language and will hold an additional workshop to discuss and hear comment on the latest draft.

Summary of Changes to the Proposed Rule

The draft State rule has been restructured to have three general elements:

- Purpose & Definitions
- Credit Exchange Function
- Criteria and Methodology for Credit Generation & Use

Purpose and Definitions

The Purpose section is essentially unchanged, with only minimal nonsubstantive wording changes.

The Definitions sections was revised by dropping two terms that are no longer used: "emissions achieved," and "emissions baseline." Two terms were added: "emission reduction duration," and "surplus." Finally, the definition for "interchangeable credit" was revised slightly.

Credit Exchange Function

The "Credit Exchange Function" Article is new only in that the name did not exist before--its contents, however, had been located elsewhere in the August 23, 1996, version of the draft rule. The new Article provides for the interchangeability of credits and establishes a credit denomination. It also now contains the section on "Banking" that previously had been located in a separate Article. The "Banking" section's contents have been revised slightly for clarification.

Criteria and Methodologies for Credit Generation and Use

The contents of this revised Article have been modified to include a "Program Reporting" section; other sections remain but contain revisions.

The "Applicability" section has been revised to add a subsection describing the requirements that an interchangeable credit must meet.

The "Generation and Use" section has a number of changes. First, a section has been added. This section would require that the use of credits must, in aggregate, result in equivalent or fewer emissions as would have occurred in lieu of trading, consistent with the District's portion of the air quality plan. Second, wording was added to allow districts within the same nonattainment area to establish a multi-district banking program. Next, a subsection was added that requires Districts to provide for the assessment and consideration of potential localized impacts on the public's exposure to air pollution. Several sections have also been reworded for clarity.

The "Calculation Methodology" was revised by replacing the equation that described how credits are to be calculated with specified criteria because the equation was confusing and misunderstood. The districts' calculation protocols must be consistent with the criteria to ensure that only valid credits are certified. A subsection was added requiring district protocols to include an element for annual credits such that multi-year credits be certified and registered in one year increments. Other minor wording clarifications were also made to some subsections.

A new, expanded section has been added for "Program Reporting." In the August 23, 1996, draft rule, program reporting had been included under the "Banking" section. As noted previously, the "Banking" section has been moved to "Credit Exchange and Function." The next "Program Reporting" section contains a more detailed description of the reports that districts are to prepare on their interchangeable credit trading program.

Comment Deadline and Future Actions

We encourage all interested parties to present comments on the draft proposed rule at the workshops. If you cannot participate or wish to supply additional information, we will accept written comments on the draft proposal until March 21, 1997. Oral and written comments received will be evaluated; ARB staff will then draft a final proposed rule. The Air Resources Board is tentatively scheduled to consider adoption of the proposed rule on May 29, 1997.

If you have any questions or comments regarding this subject, please contact Ms. Lucille van Ommering, Staff Air Pollution Specialist, Office of Air Quality and Transportation Planning, at (916) 323-0296.

Sincerely,

/s/

Lynn Terry
Assistant Executive Officer

Proposal for Workshop Discussion

Release Date: February 28, 1997

Workshop Dates:

March 14, 1997 (Sacramento)

March 17, 1997 (El Monte)

The proposed regulation would be incorporated as new section 91500 through 91508 of Subchapter 5.5, Chapter 1, Division 3, Title 17, California Code of Regulations, to read as follows:

Subchapter 5.5 **INTERCHANGEABLE AIR POLLUTION EMISSION
REDUCTION CREDITS**

Article 1. Scope and Policy; Definitions

91500. Purpose.

This regulation establishes a statewide methodology for use by air pollution control and air quality management districts (Districts) when calculating the value of emission reduction credits from stationary, mobile, or area sources. As such, this regulation (1) provides a uniform exchange mechanism for stationary, mobile, and area source credits; and (2) provides for the use of credits as a compliance alternative for meeting specified District control requirements. The regulation is intended to ensure that interchangeable credits represent verified emission reductions that are real, permanent, quantifiable, enforceable, and surplus to those emission reductions which are needed to comply with existing requirements and with District air quality plans.

91501. Definitions.

In complying with this regulation, Districts shall apply definitions included in District rules adopted pursuant to section 40709 et seq. of the Health and Safety Code, except as defined below.

(a) "Air quality plan" includes, but is not limited to, attainment, rate-of-progress, and maintenance plans adopted by Districts pursuant to State requirements specified in Chapter 10 (commencing with section 40910) of Part 3 of the Health & Safety Code (the California Clean Air Act), and federal requirements specified in the Clean Air Act governing the State Implementation Plan (SIP).

(b) "Certified" means an interchangeable credit has been evaluated by the air

pollution control officer of the affected District pursuant to the requirements of this regulation and found to comply with all applicable District, state, and federal requirements.

(c) "Credit generation period" means the period of time, specified by year, in which interchangeable credits are generated.

(d) "Emission reduction duration" means the length of time during which the action generating the emission reduction credit results in verifiable and surplus emission reductions.

(e) "Interchangeable credit" means an emission reduction credit generated from a stationary, mobile, or area source that can be used, traded, or banked among programs and/or source categories as specified in this regulation and in accordance with state and federal law.

(f) "Registered" means the act of recording in a District's banking register an interchangeable credit's deposit, withdrawal, and transfer transactions.

(g) "Surplus" means that the reduction is not required throughout the time of the emission reduction duration by any local, state or federal permit, rule, regulation, law, ordinance or the most recent locally approved air quality plan. If the control efficiency or emission standard in the most recent locally approved air quality plan is less stringent than the control efficiency or emission standard in the applicable SIP for a specific source category, then the federally approved SIP will be used for purposes of determining surplus reductions.

Article 2. Credit Exchange Function

91502. Certified Credits

District certified credits that are generated pursuant to relevant district, state, and federal requirements and calculation protocols can be used interchangeably among programs and/or source categories to meet applicable district requirements.

91503. Credit Denomination

The value of a credit that is used interchangeably shall be expressed in pounds of pollutant in the year generated.

91504. Banking

(a) Interchangeable credits shall comply with the requirements set forth in Health and Safety Code sections 40709 through 40714.5, and applicable federal requirements governing the creation, banking, and use of credits. Emission

reductions proposed to offset simultaneous emissions increases within the same stationary source need not be banked prior to use as offsets, pursuant to section 40709(c).

(b) The District shall specify the earliest year in which an interchangeable credit can be used.

(c) An interchangeable credit cannot be used prior to its certification and registration, or in any instances in which the District determines such use would not comply with section 91506(d).

(d) Credits can be used interchangeably within the time period specified by the District, consistent with the air quality plan and applicable state and federal requirements.

(e) While banked, a certified and registered credit will retain its full value. At the time of use, credits will be subject to prevailing federal, state, and district requirements.

Article 3. Criteria and Methodology for Generation and Use of Interchangeable Credits.

91505. Applicability.

(a) The provisions set forth in this subchapter shall apply to any District which adopts, implements, or amends a rule or regulation which provides for the generation and use of interchangeable credits from stationary, mobile, or area sources.

(b) Districts with existing interchangeable credit and trading rules and regulations shall make amendments as necessary to comply with this regulation within nine months of its effective date, unless the District can demonstrate to the satisfaction of the Executive Officer that more time, not to exceed one year total, is necessary.

(c) Districts with market incentive programs authorized by Health and Safety Code sections 39616 and 40440.1 that propose to expand such programs to allow the use of interchangeable credits shall ensure compliance with the criteria set forth in section 39616(c), and this regulation.

(d) Districts may maintain a separate account of emission reduction credits for new source review offset purposes consistent with sections 40709 et seq. and 40918 through 40920.5 of the Health and Safety Code without complying with the provisions of this regulation.

(e) Credits that are used interchangeably must meet all applicable federal, state,

and district requirements, including but not limited to the adopted air quality plan, generation and use of emission reduction credits, and the provisions of this subchapter.

91506. Generation and Use.

(a) Districts shall adopt rules which, at a minimum, comply with the provisions of this subchapter and with sections 40920.6(c) and 40709-40714.5 of the Health and Safety Code prior to allowing the use of interchangeable credits to meet District requirements other than the offset provisions of their new source review programs.

(b) Interchangeable credits must be certified by the District in which the generation occurs and registered in that District's emission reduction credit bank prior to use. Districts within the same nonattainment area may establish a multi-district banking program.

(c) Districts, in consultation with the Air Resources Board, shall establish enforceable technical protocols that define how emission reductions will be calculated for purposes of certifying them as interchangeable credits.

(d) Use of interchangeable credits must, in the aggregate, result in no greater annual pollutant-specific emissions than would have occurred in lieu of trading, consistent with the District's portion of the air quality plan. The assessment of equivalency shall take into account the exceedance season for each affected nonattainment pollutant.

(e) Districts shall ensure compliance with federal, state and District requirements governing credit generation and use through permit conditions or other enforceable instruments.

(f) Districts shall not allow the use of emission reduction credits to comply with the "best available control technology" requirements of sections 40405 and 40918-40920.5 of the Health and Safety Code, or with any technology-based requirements of sections 111, 169, 171 and 173 of the federal Clean Air Act.

(g) Districts may authorize the use of interchangeable credits consistent with any federal, state, or local requirements applicable to toxic air contaminants, if allowed by regulations established pursuant to section 39665 et seq. of the Health and Safety Code, and section 112 of the federal Clean Air Act.

(h) Surplus emission reductions that meet the requirements of Health and Safety Code section 40714.5 can be used to create interchangeable credits. If not already accounted for in District air quality plans, baseline emissions from qualifying sources must be included and accounted for in the next update to the plan.

(i) Emission reduction credits from permitted stationary sources that were certified and banked solely for use in a District's new source review program must be included and accounted for in the air quality plan prior to use in an interchangeable credit trading program.

(j) Emission reduction credits or market-based trading instruments generated under programs authorized by Health and Safety Code sections 39616 and 40440.1 may be used interchangeably only upon a determination by the District, based upon a study conducted by the District, with the concurrence of the ARB, that the interchangeable use of such credits complies with all applicable requirements, including the criteria in Health and Safety Code section 39616(c).

(k) District rules shall provide for assessment and consideration of potential localized impacts that use of interchangeable credits may have on the public's exposure to air pollution.

91507. Calculation Methodology.

(a) Interchangeable credits shall be calculated based on a District's adopted calculation protocol. The calculation protocol shall include the elements specified in subparagraph (b) and shall be consistent with the following criteria:

(1) Emission reductions used to generate interchangeable credits shall be real, permanent for the term of credit generation, enforceable, surplus, and quantifiable.

(2) Emission reductions shall be calculated using the most stringent of historic actual emissions, applicable requirements, or the District's air quality plan.

(b) Districts shall provide for enforceable credit calculation protocols and procedures that contain the following elements:

(1) Calculation methods to determine the amount of reductions being generated as credits, including formulae accounting for emissions rate, operating period and activity level.

(2) Annualized credits, such that surplus emissions reductions that are generated over one or more years shall be calculated, certified and registered in one year increments.

(3) Procedures for certifying that emission reductions are surplus and available for use as interchangeable credits.

(4) Procedures to incorporate emission inventory updates and changes in source

category baselines, air quality plans, and applicable regulatory requirements into the credit calculation protocols.

(5) Methodologies used to determine the time period in which a banked credit is available for use, consistent with the air quality plan.

(6) Provisions for the use of ARB calculation methodologies, emission factors, certification standards, and emission baseline data for motor vehicles and products under ARB regulatory authority.

(7) Provisions for monitoring, recordkeeping, and reporting requirements to verify and enforce credit generation at the specified value over the full generation period.

91508. Program Reporting

(a) Districts shall prepare an annual report on their interchangeable credit trading programs that document the following:

(1) Quantity of interchangeable credits generated and used, by pollutant;

(2) Extent to which emission reduction credits were used, by rule and source category, to comply with Best Available Retrofit Control Technology and how they were accounted for in the air quality plan;

(3) Summary of changes made affecting the calculation methodology elements defined in section 91507(b); and,

(4) Actions taken to comply with applicable credit generation and use requirements contained in section 91506.

(b) As part of the triennial progress assessment of the air quality plan, Districts with interchangeable credit trading programs shall evaluate the performance of the trading program as an alternative compliance-based approach to meet applicable District requirements. The evaluation shall include the results of the annual reports.